

CLAUSE NOTES

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Nation Building and Jobs Plan Facilitation (Tasmanian) Bill 2009

PART 1 – PRELIMINARY

CLAUSE 1 - SHORT TITLE

This clause provides the short title to be used when citing the Bill for any legal purpose.

CLAUSE 2 - COMMENCEMENT

The Bill commences on the day that it receives Royal Assent.

CLAUSE 3 - INTERPRETATION

Several key terms used in the Bill are defined in this section, including:

- Construction works
- EPA Director
- Key particulars
- Law of the State
- Local newspaper
- NPA
- NPA project
- Planning Act
- Planning Minister
- Planning permit
- Planning scheme
- Project
- Project Authority
- Proponent
- Regulations
- Relevant council
- Relevant planning scheme
- Relevant use or development
- School infrastructure
- Site
- Social housing

In the absence of an intention in this Bill to the contrary, the definitions used in the *Land Use Planning and Approvals 1993* also apply in this Bill.

CLAUSE 4 - ACT BINDS THE CROWN

This clause discloses an express legislative intention that the Bill binds the Crown in right of Tasmania.

PART 2 – DECLARATION OF NPA

CLAUSE 5 - DECLARATION OF NPA PROJECT

This clause sets out the process by which a project becomes an “NPA project” for the purposes of this Bill.

This clause provides that the Treasurer can declare a project to be an NPA project where he is satisfied it is a social housing project, school infrastructure project, or project of a type prescribed in regulations, that progresses the National Partnership Agreement on the National Building and Jobs Plan: Building Prosperity for the Future and Supporting Jobs, and it has not been previously refused a planning permit.

A declaration is made by notice in the Gazette which, pursuant to sub clause (2), is to include:

- a statement of whether the project is a social housing project, school infrastructure project or project of a type prescribed by regulations;
- information as to the use or development of the project;
- information on the site of the project;
- a brief description of the project (including the scope and nature of the required works);
- the identity and business address of the proponent of the project; and
- any other information that the Treasurer considers necessary or expedient.

The Treasurer must notify the council of the municipal area in which the project is undertaken of the declaration and invite the council to make representations in writing within the timeframe specified, to the proponent of the project, pursuant to sub-clause (3).

CLAUSE 6 - EFFECT OF DECLARATION

This clause sets out the effect of a declaration made pursuant to clause 5.

Where a project has been declared an NPA project and in the absence of clause 13 being in operation, the *Land Use Planning and Approvals Act 1993* and any planning scheme, special planning order, planning directive or interim order, made under the *Land Use Planning and Approvals Act 1993*, do not apply.

Construction work (as defined in clause 6(2)) cannot commence, however, until the NPA project has been certified under clause 12.

CLAUSE 7 - PUBLIC CONSULTATION

Clause 7 requires that, once a declaration has been made then:

- The proponent must publish a notice in a daily newspaper (published in Tasmania and circulated generally in the same region as that in which the project is undertaken) containing the information set out in that clause; and
- The proponent is to exhibit the following information, as defined in clause 7(4), consistent with that notice:
 - o Whether the project is a social housing project, school infrastructure project or project of a type prescribed by regulations;
 - o Information as to the use or development of the project;
 - o The site of the project;
 - o A brief description of the project (including the scope and nature of the required works);
 - o The identity and business address of the proponent of the project; and
 - o Building and site plans, if available.

Clause 7(3) allows the information to be exhibited by electronic means, however hard copies must also be available.

CLAUSE 8 - ENVIRONMENTAL CONSULTATION

The effect of this clause is to require the proponent to consult with the Director, Environment Protection Authority, where the project would have required a planning permit and or amendment to the relevant planning scheme, in order to proceed.

CLAUSE 9 - REPRESENTATIONS AND CONSULTATION

This clause establishes mechanisms for consultation.

Clause 9(1) provides that councils notified by the Treasurer pursuant to clause 5(3) may make representations to the proponent about the project, in accordance with the Treasurer's notification.

Clause 9(2) provides that the Director, Environment Protection Authority, can make representations in response to a notice under clause 8.

Clause 9(3) provides that any other person may make representations in response to a notice published in a newspaper pursuant to clause 7(1), in accordance with the notice published.

Clause 9(4) provides the proponent with the power to consult any other person that it wishes about the project.

Clause 9(5) provides:

- in the case of a social housing project, the Director of Housing;
- in the case of a school infrastructure project, the Secretary of the Department of Education; and
- in the case of any other prescribed project, the person prescribed, With the power to consult any person that it wishes about the project and request information about the project from the proponent.

CLAUSE 10 – CONSIDERATION OF REPRESENTATIONS AND MODIFICATION OF PROJECT

This clause establishes a process for modifying the project in light of the consultation undertaken and other relevant matters.

The proponent has to consider representations made, pursuant to clause 8, by the council and by any other person and consider other matters relevant to the project, which includes, but are not limited to, those matters set out in clause 10(4).

Clause 10(3) provides the proponent with the power to modify the project after considering the representations from the council or other persons, or other relevant matters, however, the project may not be modified so as to change the site, increase its overall scale or substantially change the use and development.

PART 3 – CERTIFICATION OF NPA PROJECT

CLAUSE 11 – APPLICATION

This clause establishes the process for applying for certification of the project.

Clause 11(1) and (2) provide that once the proponent has followed all of the procedures set out in Part 2 of the Bill, it may apply to:

- in the case of a social housing project, the Director of Housing;
- in the case of a school infrastructure project, the Secretary of the Department of Education; and
- in the case of any other prescribed project, the person prescribed,

To have the project certified to be an NPA Project.

Clause 11(3) provides that in applying for certification, the proponent must comply with any requirements and pay any fees, set out in regulations.

On receiving the application for certification:

- in the case of a social housing project, the Director of Housing;
- in the case of a school infrastructure project, the Secretary of the Department of Education; and
- in the case of any other prescribed project, the person prescribed,

Has the power to make enquiries of any person, or seek any further information or evidence from the proponent, that it requires to properly consider the application, pursuant to clause 12(1).

CLAUSE 12 – CERTIFICATION

This clause sets out the process for certifying a project to be an NPA project.

Where:

- in the case of a social housing project, the Director of Housing;
- in the case of a school infrastructure project, the Secretary of the Department of Education; and
- in the case of any other prescribed project, the person prescribed,

Is satisfied that:

- the application is valid;
- the actions required by clauses 5(3), 7 and if applicable, 8 have been taken;
- representations, if any, have been considered;
- the concerns of the Director, Environment Protection Authority have been adequately addressed; and
- modifications, if any, made the project are in accordance with clause 10.

Then it may:

- certify, in writing, that the project is a project declared pursuant to clause 5;
- accord the relevant use or development to the project (this may include a use or development associated with the project), pursuant to clauses 12(3); and

- provide notification of the certification: in the Gazette and to the relevant council; to the Director, Environment Protection Authority, and in any other way that it may consider necessary, pursuant to clause 12(4).

CLAUSE 13 – EFFECT OF CERTIFICATION

This clause sets out the effect of a certification made pursuant to clause 12.

Where a project is certified to be an NPA project, construction of that project may commence in accordance with the certification subject to other regulatory requirements (e.g., heritage) being satisfied, and:

- If the planning scheme that would have applied, had it not been for clause 6(1), does not require amendment (as specified in clause 14) the *Land Use Planning and Approvals Act 1993* applies to the use and development, pursuant to clause 13(3)(a); or
- If the planning scheme that would have applied, had it not been for clause 6(1), provides that the use and development pertaining to the project, is only to be permitted if a planning permit is granted, then the *Land Use Planning and Approvals Act 1993* applies and the certification is taken to be a planning permit authorising the use and development as set out in the certification, pursuant to 13(3)(b); or
- If the planning scheme that would have applied, had it not been for clause 6(1), requires amendment (as specified in clause 14), then once those amendments have been made, the *Land Use Planning and Approvals Act 1993* applies to the use and development and, if required, the certification acts as a planning permit authorising the use and development as set out in the certification, pursuant to 13(4).

CLAUSE 14 – CONSEQUENTIAL AMENDMENT OF PLANNING SCHEMES

This clause ensures that any relevant planning instruments are amended to the extent necessary to allow the project to proceed lawfully.

The clause provides the power for the Minister for Planning, after consultation with the relevant planning authority, to amend planning schemes, special planning orders or interim orders to make them consistent with use or development for the project.

Sub clause 3 ensures this power overrides the provisions of the *Land Use Planning and Approvals Act 1993*.

The Minister for Planning is to notify the public of the amendment, in any way he considers expedient, unless prescribed in regulations in which case he must comply with that prescription, pursuant to clause 14(5).

Further amendment of the planning scheme may, take place in the usual way, after completion of the project, pursuant to clause 14(4).

PART 4 – MISCELLANEOUS

CLAUSE 15 – CHANGE OF PROPONENT

Clause 15 allows the proponent of a project to change without impacting upon the operation of the Bill.

CLAUSE 16 – DELEGATION

Clause 16 allows:

- the Minister for Planning;
- in the case of a social housing project, the Director of Housing;
- in the case of a school infrastructure project, the Secretary of the Department of Education; and
- in the case of any other prescribed project, the person prescribed,
-

to delegate all powers under this Bill, other than the powers of delegation.

Clause 16(2) prevents the Treasurer from delegating his powers under the Bill.

CLAUSE 17 – COMPLIANCE WITH OTHER LAWS

This clause expressly states that certification of a project, pursuant to clause 12, does not provide authority for construction to be undertaken contrary to any law of State.

CLAUSE 18 – LIMITATION OF APPEALS

This clause limits the rights of any person challenging or appealing against any action, decision, process, matter or thing that arises from or relates to the matters or things covered by this Act.

CLAUSE 19 – SERVICE OF NOTICES

This clause sets out how notices are to be serviced for the purposes of the Bill.

CLAUSE 20 – ACT PREVAILS OVER OTHER LAWS

Where this Bill conflicts with another law of Tasmania, then this Bill takes precedence.

CLAUSE 21 – REGULATIONS

Regulations may be made for the purposes of the Bill.

CLAUSE 22 – STATUS OF INSTRUMENTS UNDER THE ACT

Notices or instruments under the Bill are not statutory rules and may not be declared to be subordinate legislation.

CLAUSE 23 – ADMINISTRATION OF ACT

This clause specifies that the Act is to be administered by the Treasurer until an order is made under S.4 of the *Administrative Arrangements Act 1990*.

CLAUSE 24 – EXPIRY OF ACT

Except for Part 1 and clause 18, the Bill expires on 31 December 2012, or at an earlier time declared by the Treasurer.

SCHEDULE 1 – THE AGREEMENT

The National Partnership Agreement on the *Nation Building and Jobs Plan: Building Prosperity for the Future and Supporting Jobs Now*, is included in this schedule.